In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-708

PAUL J. TRAFFICANTE, ET AL., PETITIONERS

v.

METROPOLITAN LIFE INSURANCE COMPANY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

The United States is of the view that the petition for a writ of certiorari should be granted.

This case presents the question whether, under Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-3619, tenants in an apartment complex can maintain a suit seeking to enjoin their landlord from refusing to rent to non-whites on the basis of race.[1] The court of appeals, affirming the district court's dismissal of petitioners' complaint, held that only the Attorney General or prospective tenants who have been discriminated against have "standing" to sue under

[1] Petitioners also invoked the Civil Rights Act of 1866, 42 U.S.C. 1982, and sought damages.

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Title VIII, since, in the court's view, petitioners are not "persons aggrieved" within the meaning of 42 U.S.C. 3610(a) and 3612.[2]

The questions raised by this case are of substantial importance in the implementation of Title VIII and warrant review by this Court. The decision of the court of appeals precludes an entire class of persons—incumbent tenants—from supplementing the Attorney General's enforcement of Title VIII and thereby impedes full realization of the "policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C. 3601. Since the effectiveness of Title VIII depends in large measure upon the resources available for enforcement, this important question of who may bring actions under Title VIII should be promptly resolved—and resolved, we submit, consistently with the broad declaration of congressional policy on which the Act is founded.

1. Under 42 U.S.C. 3610(a), "[a]ny person who claims to have been injured by a discriminatory housing practice * * * (hereafter 'person aggrieved') may file a complaint with the Secretary [of Housing and Urban Development]." If, within thirty days of the filing of such a complaint, the Secretary is unable to secure voluntary compliance, the "person aggrieved" may institute a civil action in the United States district court to enforce rights granted or protected under Title VIII. 42 U.S.C. 3610(d).

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[2] The United States participated as *amicus curiae* in the court of appeals in support of petitioners.

In this case, the Department of Housing and Urban Development found that petitioners, who are tenants, were within the class of "persons aggrieved" under 42 U.S.C. 3610(a) and therefore entitled to file a complaint with the Department regarding the discriminatory practices of their landlord (Pet. 12–13). When the Department's efforts to bring about voluntary compliance failed, petitioners brought this suit (Pet. App. C, p. 5).

Petitioners' complaint alleged a number of particular practices by their landlord that discriminated against prospective tenants on the basis of race (Pet. App. C, pp. 2–4).[3] The complaint further alleged that petitioners had been injured in fact by these practices since they had been deprived of the benefits of living within a nonsegregated community and had suffered, both mentally and economically, by living in a "white ghetto" (Pet. App. C, pp. 4–5).[4]

2. The court of appeals recognized that the language used by Congress in Section 3610(a) to define the class of persons entitled to sue is "very broad" (Pet. App. A, p. 4 n. 6). The court, however, construed the lan-

[3] Since the district court dismissed the complaint, the court of appeals accepted the allegations in the complaint as true (Pet. App. A, p. 6 n. 8).

[4] Thus in this respect, as well as in the statutory basis for the claim, the case presents substantially different questions from those involved in the pending cases of *Sierra Club* v. *Morton*, No. 70–34, where petitioner asserted no more than an undifferentiated "public interest" in the environment to challenge the action of federal officials, and *Laird* v. *Tatum*, No. 71–288, where the basis for standing is the alleged effect of governmental action on other persons, not parties to the litigation.

guage narrowly to include only "persons who are the objects of discriminatory housing practices" (Pet. App. A, p. 6).

In our view this narrow construction is unwarranted by the statute's language, its purpose or the legislative history of the Act. Congress said in 42 U.S.C. 3610 that "[a]ny person who claims to have been injured by a discriminary housing practice" may sue under Title VIII. As this Court stated in *Federal Communications Commission* v. *Sanders Bros. Radio Station*, 309 U.S. 470, 477, where the relevant statute allowed appeal by all "persons aggrieved" by the Commission's grant or denial of a license, "Congress had some purpose" in using such broad language.

Here Congress presumably recognized, as has this Court in related contexts, both the limited size of the Attorney General's staff for civil rights enforcement[5] and the important role private litigants have played in civil rights cases.[6] Congress accordingly concluded that with respect to housing, where racial segregation is the product of a pervasive dual housing market,[7] suits by private litigants who have suffered as a result of discriminatory housing practices would provide a necessary supplement to enforcement by the Attorney General. Cf. *J. I. Case Co.* v. *Borak*, 377 U.S. 426, 432.

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[5] See *Allen* v. *State Board of Elections*, 393 U.S. 544, 556; *Perkins* v. *Matthews*, 400 U.S. 379, 392, 396.

[6] See *Newman* v. *Piggie Park Enterprises*, 390 U.S. 400.

[7] See Hearings on S. 1358 before the Senate Sub-Committee on Housing and Urban Development of the Committee on Banking and Currency, 90th Cong. 1st Sess., p. 37 (hereinafter Senate Hearings).

It would be inconsistent with these congressional aims for the class of persons entitled to sue under Title VIII to be limited as the court of appeals held. Tenants in housing facilities maintained on a segregated basis by their landlord, as well as those who have been excluded because of their race, are injured by such illegal practices.[4] In their complaint in this case, petitioners have set forth in detail the nature of their injury. There is no reason why Congress would have intended to allow suits only by rejected applicants and not by the tenants themselves. The people already living in an apartment complex are in a position to know whether their landlord is discriminating on the basis of race; they will know the racial composition of their apartment building; they will know whether apartments are vacant while nonwhite applicants are turned away; and they will know from their own experience how prospective tenants are chosen. Moreover, the continuing injury suffered by incumbent tenants as a result of their landlord's discriminatory practices is often more amenable to effec-

[4] See *Nyquist* v. *Lee*, 402 U.S. 935, where this Court affirmed a district court decision, 318 F. Supp. 710 (W.D. N.Y.), which sustained the standing of white and black parents to challenge, under the equal protection clause, a New York statute limiting the authority of local school boards to desegregate their schools. The district court's decision was based in large part on the injury suffered by school children attending substantially uniracial schools as a result of restrictions on their opportunity to know and attend school with children of other races, 318 F. Supp. at 714.

Analogous considerations were put forward by proponents of fair housing legislation. See Senate Hearings, pp. 161–162, 180, 236, 303, 359, 384, 434.

tive judicial redress than is the injury to a prospective tenant who has been turned away, since the latter may satisfy his housing needs elsewhere before judicial relief can be secured. The incumbent tenants, therefore, may often have a substantially greater incentive to bring and prosecute fully a lawsuit, and there is no reason for construing the statutory conferral of standing contrary to this reality.

Furthermore, where, as petitioners allege here, nonwhite applicants are told by the landlord that "residents, management and employees will create a hostile atmosphere" for them if they are accepted, suits by such persons are discouraged. They may not want to live in such a place and may thus be unwilling to sue in order to secure their right to do so. In such situations, suits by the tenants themselves are essential if private litigation is to provide the supplemental enforcement Congress intended.*

For these reasons, the Secretary of Housing and Urban Development has construed the statute to allow complaints to be filed by incumbent tenants. But the court of appeals, by construing Section 3610(a) to preclude suits by such tenants, has presumably also limited the class of persons entitled to seek informal conciliatory action by the Department. The Secretary's interpretation of the statute he administers is entitled to great weight, *Udall* v. *Tallman*, 380 U.S. 1, 16. In light of this administrative construction, together

* See *Sullivan* v. *Little Hunting Park*, 396 U.S. 229, 237; *Barrows* v. *Jackson*, 346 U.S. 249, 259.

with the language of the statute itself and Congress' evident purpose in using that language, petitioners were within the class of persons entitled to sue, and the court of appeals erred in holding otherwise. The significant effect of that decision on implementation of Title VIII of the Civil Rights Act of 1968 makes review by this Court appropriate.

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted.

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